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IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 169 of 2000 Single Bench (Criminal)

CRIMINAL APPEAL UNDER SECTION 374(2) OF CODE OF CRIMINAL PROCEDURE,1973.

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Filed on 5/12/00
by Shri A. Chaturvedi Advocate
M.A.R

APPELLANT: (IN JAIL) Premlal, aged 20 years S/o Bhukhanlal Occupation- Agriculturist,Resident of Village Khairjhiti, Tahsil Kurud, District - Dhamtari (M.P.)

VERSUS

RESPONDENT: State of Madhya Pradesh, Through - Police Station Magarload, District - Dhamtari (M.P.)

CONVICTION:	SENTENCE:
Under section 307 I.P.C.	Rigorous Imprisonment of five years and fine of Rs.500/-, in default of fine further Rigorous Imprisonment for 2 months.

Received Copy of M, Cr, Ca
Criminal / Revision

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THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL No.1697/2000

Premlal

-v-

State of Madhya Pradesh

JUDGMENT

(12-04-2001)

Being aggrieved by the judgment dated 28-6-2000 passed in Sessions Trial No.54/1999 by the learned Additional Sessions Judge, Dhamtari, convicting the appellant u/s 307 IPC and sentencing him to undergo R.I. for 5 years and pay a fine of Rs.500/-, in default of payment of fine to undergo further R.I. for two months, the appellant has filed this appeal.

(2) The prosecution case in brief is that on 31-10-1998 when the victim Shivnand Sahu was coming back from the river side, the present appellant caused him injuries by means of an Axe on the head. The said Shivnand Sahu after suffering the injuries fell on the spot. P.W.1 Lekhan was informed of the incident, who immediately rushed to the spot, took his father to the Police Station, the First Information Report was lodged and immediately thereafter, the police proceeded with the investigation. On completion of the investigation the Police filed the challan. As the accused denied commission of offence, he was put to trial.

(3) After recording the evidence and hearing the parties, the learned trial Court convicted the appellant and sentenced him as referred to above.

(4) Shri R.S.Patel, learned counsel for the appellant after taking me through the statements of P.W.1 Lekhanram, son of victim Shivanand (P.W.2), Ramesh (P.W.4) and Raju (P.W.7) submits that from the statements of these witnesses, it would clearly appear that the appellant has been falsely implicated. In the alternative, he submits that from the statements of Dr.K.K.Som (P.W.8) it would clearly appear that the injuries suffered by the victim were ~~of~~ simple in nature, therefore, an offence u/s 307 IPC is not made out.

(5) On the other hand, Shri Gautam Bhaduri, learned counsel for the State submits that the manner in which a wooden log was hit thrice on the head of the victim would clearly show ~~that~~ the intention of the present appellant. According to him, in a case falling under section 307 IPC, the gravity or grievousness of an injury is not material, but the Court must see as to what was the intention behind the alleged act. He submits that the Court below was justified in convicting the appellant.

(6) P.W.2 Shivanand the victim has turned hostile. He has not supported the prosecution and has stated that somebody had hit on his head from back side, therefore, he is unable to identify the miscreants. P.W.1 Lekhanram, son of the victim undisputedly reached the spot after receiving the information that somebody had hit his father. P.W.4 Ramesh, the

nephew of P.W.2 and, P.W.7 Raju have clearly stated that the present appellant was the author of the injury. Each of them clearly stated that the appellant was armed with a pointed wooden log, came from behind the victim and hit him on his head thrice. P.W.1 Lekhan in relation to the motive has stated that the present appellant was apprehending some witch-craft on the part of the victim against the sister of the accused, therefore, to teach a lesson or chastise the victim Shivanand, he had caused him injuries. From the statement of P.W.4 Ramesh and P.W.7 Raju it would clearly appear that the applicant came from behind and hit the victim on his head. The motive suggested by P.W.1 cannot be taken to be a false stand. It does not appear from the statements of the witnesses that the appellant knew that the victim would come from a particular side. It has also not come in the evidence that the appellant was sitting for the prey and finding the best opportunity he hit the victim on his head. The manner in which the injuries were caused and the victim was hit, can be said to be the result of the feeling developed by the present appellant in his mind that because of witchcraft played by the victim, his sister was suffering to some extent. From the evidence it does not appear that the accused really intended to cause death of the victim or made an attempt on the life of the victim. The offence committed by the appellant would not fall within the purview of section 307 of IPC, but in fact would fall within the purview of section 308 IPC that is an attempt to commit culpable homicide not amounting to murder. I will be holding so in view of the act of the appellant that he used a log, selected the head for hitting and caused one after the

other as many as 3 injuries. I will not be unjustified in presuming that while doing the said act, the appellant atleast had the knowledge that by his act the victim was likely to die.

(7) Taking into consideration the totality of the circumstances, I acquit the accused of the charges punishable u/s 307 IPC. The sentence awarded to him u/s 307 IPC are set aside. The appellant is convicted u/s 308 IPC. Taking into consideration the nature of injuries which are said to be simple, but are caused on the head of the victim, I award 1½ years sentence to the appellant. The appeal to the extent indicated above is allowed.

Sd/-
R.S. Garg
Judge

/Rao/

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